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THE SHERMAN ANTI-TRUST ACT—DISCUSSION.

J. W. JENKS: As the discussion of Mr. Morawetz had to do with the legal aspects of the Sherman Anti-Trust Act, it had not been my intention, as I am not a lawyer, to comment at all upon his address. Persons not trained in the law frequently have unfortunate experiences when they attempt to enter a discussion involving legal technicalities. Inasmuch, however, as Mr. Morawetz, expressed some opinions of the nature of *obiter dicta* which are economic in kind, I wish to comment briefly upon them.

It seems to be his opinion that it is desirable to retain the Sherman Anti-Trust Act in order to prevent monopoly, and he seems to fear the monopolization of all industries. It is that point that I wish to object to. In my judgment, there is a tendency toward monopoly in certain industries, especially the so-called natural monopolies, this tendency coming from the nature of the industries themselves; but, on the other hand, there are very many industries, the majority of those in the country, that from their nature cannot be monopolized. Wherever it is possible for an industry to be started and production carried on economically with a small expenditure of capital or wherever success in an industry is dependent to a noteworthy degree upon the individual qualities of the workman, good taste, artistic judgment, etc., there is no likelihood of any monopoly that can control that industry. There cannot well be a trust of portrait painters, or even for that matter of decorators or dressmakers or milliners. Individual taste is so much of a factor in suc-

cess in any one of these industries that no one of the most successful producers will be willing to subordinate his judgment to the will of a group and to produce in a routine way. Moreover, in the case of products such as those indicated, the consumer will always be willing to pay a high price to secure the work of the individual whose taste suits him, and it would be found impossible for any combination to control or to monopolize the market.

I was particularly pleased with the frank, open-minded spirit in which Mr. Walker dealt with the question of monopoly. He recognized without any hesitation that there are certain industries in which the tendency toward monopoly is so strong that monopoly will certainly exist. He was also willing to recognize the fact that the line cannot be sharply drawn between the so-called natural monopolies and others ordinarily classed as capitalistic monopolies, in which the tendency toward monopoly comes from the decreasing cost of the product when production is carried on on a great scale.

It is always best in matters of legislation, as well as in business matters that are more purely private, to recognize established facts; and then, facing the facts, attempt to secure wise action. It has been the custom of our legislators, generally speaking, to assume that monopoly is always an evil and that the principle of competition is always good. I am quite ready to agree that the principle of competition is essential in industry, but I believe that the time has come to recognize in certain lines of industry, especially the so-called natural monopolies, that the principle of competition is not sufficient to protect the public, and furthermore that in these lines of industry we may not look upon monopoly as always an evil. We must, under such circumstances, simply recognize monopoly as a

normal condition for the industry concerned, and then, recognizing the monopoly, protect the public against its aggression by whatever form of regulation seems wisest. It may be, as in the case of street railways, that it will be best to fix prices and limit profits. In other lines of industry it may be, as Mr. Walker has suggested, that it will not be found practicable to limit prices but that we may accomplish something of the same result by taxing profits. We need still further experience to determine the best methods in all cases.

It is on this account that we may well welcome the new corporation tax soon to go into effect. The suggestion was made some years ago by the Industrial Commission that a federal tax on corporations might give information that would be of very great importance. A tax, especially on net incomes, will soon enable the federal government so to understand the conditions of industries of different kinds, especially in those establishments carried on on a large scale, that it can recognize those in which the tendency toward monopoly is so strong that it cannot readily or wisely be overcome. In such cases the government may recognize the monopoly and put it under control. It will also be able to recognize the industries in which the principle of competition may still normally be maintained and under proper conditions prove sufficient to protect the people without further interference on the part of the government.

The essential point to be kept in mind is that we should recognize openly and frankly industrial conditions, and, setting aside preconceived prejudices, so frame our laws and so shape our administration that these conditions will be so met that the interests of the public will be protected and promoted.